

**EXHIBIT 6**

# Transcript of the Testimony of **Jennifer Virden**

June 17, 2021

Jennifer Virden v. The City of Austin

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1 position if one comes open?

2 A I am running for mayor.

3 Q Okay. That isn't quite what I asked you.

4 You're not running for a city council

5 seat if one becomes open and you reside in it?

6 A I am running for mayor at this time, and I

7 could change that if a council district seat comes open

8 during the remapping, but at this time I am definitely

9 running for mayor.

10 Q Okay. And I'm going to try my question

11 again.

12 A Okay.

13 Q Okay.

14 A Well, that really was an answer, so I don't

15 know how else I'm going to answer it.

16 Q I'm not sure. So have you decided not to run

17 for a city council seat?

18 A I have not decided not to run for a city

19 council seat, but I have definitely decided to run for

20 mayor, and I'm leaving my options open.

21 Q What do you mean when you say you're leaving

22 your options open?

23 A I'm saying that at this time I'm definitely

24 running for mayor, and if circumstances change or if we

25 feel like the environment has changed, then we could

Page 5

1 possibly decide to run for the city council position if

2 it comes open, but at this time most definitely running

3 for mayor.

4 Q What kind of circumstances are you talking

5 about?

6 A Just depending on the environment and however

7 things develop over the next few months.

8 Q What do you mean by "the environment"?

9 A The political environment.

10 Q What -- tell me some of the specifics.

11 A Strategically speaking, however we feel we

12 are most likely to be able to make a positive

13 difference in Austin, and right now it's mayor. We, we

14 need leadership in the mayor's office, and I feel like

15 that I'm the best person for the job.

16 Q So if the circumstances change and the

17 environment changes in a way that you change your mind,

18 have you decided which city council seat you want to

19 run for?

20 A I do not want to run for a city council --

21 Q I didn't --

22 A -- seat.

23 Q -- ask you that question. If circumstances

24 change and you decide not to run for mayor and you run

25 for a city council seat instead, have you decided which

Page 6

1 city council seat you're going to run for?

2 A Well, depending on how remapping goes, we

3 don't know what the district number's going to be, but

4 it's in the district where I live.

5 Q Okay. So you don't plan to leave.

6 A No.

7 Q Let me show you an exhibit. I'm going to ask

8 to mark this Deposition, Virden Deposition Exhibit 1.

9 (Exhibit No. 1 marked.)

10 Q Okay. I will represent to you that that's a

11 colored map showing the general outlines -- or the

12 outlines of this current city council district. You

13 understand that's what that --

14 A Yes.

15 Q -- appears to be? And you'll notice there

16 that there's a little red arrow in District 10? Do you

17 see that?

18 A Yes.

19 Q And you see on the, on the right-hand side

20 there's something that says, indicates, 8307 High Oak

21 Drive?

22 A Yes.

23 Q Does that appear to be, not precise, but a

24 pretty close approximation of where you live?

25 A Yes.

Page 7

1 Q Okay. So for city council -- you don't plan

2 to move and you say there may be some remapping that

3 may put you in a district that you may decide to run

4 for, depending on what you decide to do about the mayor

5 and whether the circumstances change. So let's look at

6 the districts. Do you see District 7 there?

7 A Yes.

8 Q So that's the closest district as the lines

9 are now out- outside -- adjoining District 10 that's

10 not in District 10, right? Closest district to your

11 current residence.

12 A Currently. Yes.

13 Q Okay. Do you know whether District 7 is on

14 the ballot in 2022?

15 A It is.

16 Q You sure of that?

17 A No. I'm sorry. District 7 is not. No.

18 Q Do you see District 6 up there to the north?

19 A Yes.

20 Q Do you know whether District 6 is on the

21 ballot?

22 A It is not on the ballot --

23 Q Do you see --

24 A -- at this moment. No.

25 Q Do you see District 9?

Page 8

1 A Yes.

2 Q Do you know whether it's on the ballot?

3 A It is. It will be on in the November --

4 Q Do you know about how far the closest part of

5 District 9 is to your home? Do you have an estimate?

6 A Probably about five miles.

7 Q Okay. Do you see District 10?

8 A Yes.

9 Q I'm sorry. Not District 10. That's obvious.

10 District 8?

11 A Yes.

12 Q And do you have an estimate about how far

13 District 8's closest line is to your house?

14 A 10 miles? I don't know.

15 Q So, and District 8 is on the ballot in

16 2022 --

17 A Mm-hm.

18 Q -- right?

19 A Yes.

20 Q Do you know whether there's an, going to be

21 an incumbent in District 8?

22 A I don't know.

23 Q Do you know whether there's going to be an

24 incumbent in District 9?

25 A Well, I don't know for sure. I think there's

Page 9

1 been rumors that somebody was going to petition to run

2 again, but I think she's been termed out, or she will

3 be.

4 Q She's been what now?

5 A I believe that's Kathy Tovo's district, and I

6 believe that she is already termed out. She's put

7 file- petition to run.

8 Q Okay. And what about the mayoral race, do

9 you know whether there will be in an incumbent in that

10 race?

11 A Do not know that yet. That's -- there's been

12 rumors that he was going to petition to run again as

13 well.

14 Q And by "he" you mean Mayor Adler.

15 A Yes.

16 Q You understand that he's been elected to two

17 consecutive terms and will be termed out but for the

18 petition, right?

19 A Yes.

20 Q Does the issue of whether there's an

21 incumbent in the mayoral race factor in your evaluation

22 of whether to continue running for mayor?

23 A I'm sorry. Could you repeat the question?

24 Q Sure. I may not say it exactly the same.

25 Does the possibility of there being an incumbent in the

Page 10

1 mayoral race running have any effect on your

2 decision-making about whether to continue running for

3 mayor?

4 A No.

5 Q When did you decide you were running for

6 mayor?

7 A I decided to either -- I decided to run for a

8 city office immediately after the runoff on December

9 15th, and as time has gone by since December 15th it's

10 become more and more clear every week that the mayoral

11 office is the one that I want to have.

12 Q And when did you make that decision?

13 A Hm, I'm -- it's been a gradual decision, and

14 it's been solidified over -- I can't give you an exact

15 date on when I decided to --

16 Q Give me an approximation.

17 A I would say I started really getting serious

18 about it probably in February of this year.

19 Q Okay. When did you first post on your

20 campaign website that you were running for mayor?

21 A I do not recall.

22 Q Do you have an estimate?

23 A Middle of May possibly.

24 Q Was that before or after you filed your

25 amended -- amendment to your appointment (inaudible)

Page 11

1 treasurer?

2 A I do not recall.

3 THE REPORTER: Appointment for

4 what?

5 MR. HICKS: Campaign treasurer.

6 Q You don't recall?

7 A I don't recall.

8 Q And on your Twitter account you say, at least

9 yesterday it said, "JenniferforAustin for mayor 2022."

10 A Mm-hm.

11 Q Sorry. I read the wrong one. "Officially

12 running for mayor 2022."

13 A (Nodding head)

14 Q What does "officially" running mean?

15 A Just, I guess it's just a word I chose to

16 announce to whoever might be reading that that I'm not

17 just thinking about it, it's really happening, we're

18 doing it.

19 Q When did you post that Twitter?

20 A I don't recall.

21 Q Was it in the last week?

22 A May I see the paper?

23 Q Sure. I'll -- let me let you know what I

24 did. I copied it directly off and then pasted.

25 A Okay.

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3 (Pages 9 to 12)

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1 MR. NAJVAR: I'm going to object to  
2 asked and answered.  
3 A And which part you're asking?  
4 Q (By Mr. Hicks) You say "Officially running  
5 for mayor" --  
6 A Oh, that was months, that was a few months  
7 ago. It's June -- I would say the beginning of May,  
8 maybe before then.  
9 Q Okay.  
10 A I'm -- I don't recall, because I don't commit  
11 those -- everything I do on social media to memory, the  
12 dates of whatever I do.  
13 Q But you -- tell me again, when you say  
14 "officially" you don't mean that you have filed for  
15 mayor, right?  
16 A No. We have not filed to run for any  
17 specific office yet.  
18 Q Okay. I'm just trying to understand what  
19 "official" means.  
20 Do you recall your, your amendment to  
21 your campaign treasurer appointment?  
22 A Yes.  
23 Q And do you remember the description you gave  
24 for the office running for "if known"?  
25 A I, I believe we did not declare an office on

Page 13

1 that amended treasurer report.  
2 Q Right. It says "if known," right? And you  
3 didn't --  
4 A Yes.  
5 Q -- even know when you filed that, right?  
6 A I did not check a box on that. I just -- it  
7 just --  
8 Q Well, I know, but --  
9 A -- says "if known."  
10 Q -- my question is, did you know when you  
11 filed it?  
12 A I was leaving my options open, and --  
13 Q Did you know? Just can you answer that  
14 question?  
15 MR. NAJVAR: I'm going to object,  
16 and if you're going to ask her a question about a  
17 document --  
18 MR. HICKS: I'll show --  
19 MR. NAJVAR: -- then give her the  
20 document.  
21 MR. HICKS: It's my choice about  
22 whether to do that. If she needs to see it, I'm happy  
23 to show it to her.  
24 Q So what did it mean, "if known," to you?  
25 A "If known," it means if I knew for sure, and

Page 14

1 if it's not required to check the box, then I didn't  
2 check the box.  
3 Q Let me ask you to look at --  
4 MR. HICKS: Let me just go ahead  
5 and mark this as Deposition Exhibit 2. I don't  
6 have -- y'all have copies of it. I don't have extra  
7 copies of it.  
8 (Exhibit No. 2 marked.)  
9 MR. NAJVAR: Before you ask her a  
10 question, since you don't have a copy for me, where,  
11 where is this?  
12 MR. HICKS: It is attached -- you  
13 attached it. It's, it is -- I can tell you in just a  
14 second. I'll tell you precisely where it is.  
15 MR. NAJVAR: This is her amended  
16 treasury appointment form?  
17 MR. HICKS: Yes. David --  
18 THE WITNESS: Here, right there. I  
19 just saw it.  
20 Q (By Mr. Hicks) Okay. Do you see in Item 6  
21 [sic] there it says "Office Sought" --  
22 A Yes.  
23 Q -- "(if known)"? What do you say there?  
24 A "November 2022 Mayor or Council District."  
25 Q Okay. And is the "or Council District" not

Page 15

1 true anymore?  
2 A No. It's not true or untrue, and I wasn't  
3 required at this time to say whether or not I was  
4 running for mayor or council.  
5 Q Because you didn't know.  
6 A It's not that I didn't know. I haven't -- I  
7 have the option to leave that open, and so that is what  
8 I decided to do on this form.  
9 Q So what do you think "if known" means on that  
10 item? What do you think when you're filling it out?  
11 A And it is known that I was going to run for a  
12 city seat, mayor or council district.  
13 Q Okay.  
14 A And that's, and that is an allowable answer  
15 for that box.  
16 Q That's -- I don't think you get to decide  
17 that.  
18 So you at this point, that point, only  
19 knew that you were going to run for one of those two  
20 things, right?  
21 A Yes. Those are the two offices I'm  
22 considering, or was considering at that time. Yes.  
23 Q All right. And now you're still considering  
24 those two offices, correct?  
25 A Possibly.

Page 16

1 Q Are you or are you not?

2 A Possibly. I --

3 Q I know, but I just need to know --

4 A I have --

5 Q -- are you considering.

6 A -- the option to change that. Right now I'm

7 running for mayor, and that's what I'm running for.

8 Q So --

9 A But if, if I decide in the future, then I

10 will run for a council district if it becomes open

11 where I live. But right now I'm running for mayor.

12 Q And you know you're running for mayor, right?

13 A I know I'm running for mayor.

14 Q Are you going to amend your filing for --

15 A If my --

16 Q -- a campaign -- may I finish the question?

17 A Sure.

18 Q Are you going to amend your campaign

19 treasurer appointment to reflect what you now know?

20 A I will amend this if my lawyer advises me

21 that's what I need to do.

22 Q Okay. But otherwise you won't; is that

23 correct?

24 A I'm going to defer to my lawyer.

25 Q Well, are you going to do what he says?

Page 17

1 A Yes. I'm going to do what he says in this

2 regard.

3 Q Okay. Now, I'm --

4 MR. HICKS: Since, since I'm

5 having a hard time calling these things up quickly,

6 I'll just mark this. So Deposition Exhibit 3, it's the

7 appoint -- I'm going to ask you to mark it as

8 Deposition Exhibit 3.

9 (Exhibit No. 3 marked.)

10 Q It's the appointment, the original

11 appointment of a campaign treasurer back in 20 --

12 A August.

13 Q August of 2020.

14 A Thank you.

15 Q Do you see that?

16 A Yes.

17 Q Do you see in item 6 there you identify

18 District 10 --

19 A Yes.

20 Q -- as the district? You knew you were

21 running for that, right?

22 A Yes.

23 Q What is the date of that?

24 A August 17th, 2020.

25 Q And you understand that you have to designate

Page 18

1 a campaign treasurer before you can solicit and accept

2 campaign contributions, correct?

3 A Yes.

4 Q So I'm going to show you, this is an

5 excerpt --

6 MR. HICKS: I'll ask you to mark it

7 first, Deposition Exhibit 4.

8 (Exhibit No. 4 marked.)

9 Q And I'll tell you where to find it in just a

10 second. And if you can't find, we can call it up for

11 you.

12 MR. HICKS: Let me just say where,

13 where you can find it. It's in the emailed documents

14 that I sent you, Jerad, yesterday afternoon. It's

15 attachment, it's the first attachment --

16 Can you call it up, Carol?

17 MS. SMITH: Okay. Just a second.

18 Q You already know what I'm going to --

19 A Yeah.

20 Q -- ask you right?

21 A Yes.

22 Q Let me -- but before you answer let's do --

23 MR. HICKS: Jerad, do you need us

24 to call that up, or do you see what you want to see?

25 MR. NAJVAR: Well, if you're asking

Page 19

1 her about this page, I've got it here in front of me.

2 MR. HICKS: You're okay with that?

3 MR. NAJVAR: Yes. I'm okay.

4 Q (By Mr. Hicks) Can you just tell me what

5 that is, or used to be?

6 A It's part of my filing, my campaign filing.

7 Q From?

8 A August, the first one.

9 Q August of --

10 A Campaign finance report.

11 Q Isn't -- it's the October 7 of 2020 campaign

12 finance report, correct?

13 A Yes. Approximately the due date for it.

14 Yeah.

15 Q Yeah, yeah. And you see -- that's an excerpt

16 from one of the packages, and you see on there there

17 are two people named Skaggs?

18 A Yes.

19 Q And do you see the date of the --

20 A I do.

21 Q -- contribution? What's the date?

22 A August 1st, 2020.

23 Q Can you explain what happened there?

24 A I cannot. I don't know if that was a typo

25 or -- I know that I didn't take any contributions

Page 20



1 before I filed, because I didn't even know anybody. So  
 2 that, that must be a typo.

3 Q Okay. Do you remember the campaign  
 4 contributions coming in?

5 A Well, not every single one of them, but yes,  
 6 I do remember --

7 Q Do you remember those two?

8 A Yeah. I do.

9 Q And what, what's memorable about them?

10 A Well, I remember that I believe it was by  
 11 check, and it was Skaggs. I like the -- I, I recognize  
 12 Jim Skaggs' name. I didn't know his wife's name was  
 13 Betty, but yeah.

14 Q Okay. So are you saying that you did not  
 15 receive those contributions on that date indicated?

16 A I am 99 percent sure that I did not receive  
 17 any contributions before August 17th. Not August 1st.  
 18 It's probably a typo, and I need to file a corrected  
 19 report.

20 Q Is this the first -- is the race for District  
 21 10 the first elective office you've sought?

22 A Yes.

23 Q Public elected office --

24 A Yes.

25 Q -- you've sought? When did you get

Page 21

1 interested in running for that seat?

2 A Oh, whatever -- when everything was going  
 3 down about the, the homeless crisis exploding and then  
 4 defunding the police, and then I thought about it for  
 5 about a month or two and decided to file I think on the  
 6 last day.

7 Q And you could -- as I recall, you announced  
 8 on August 17th, same day --

9 A Mm-hm.

10 Q -- you did the treasurer appointment,  
 11 correct?

12 A Yes.

13 Q Had you been following city council policy  
 14 developments for the years before that at all?

15 A Very loosely.

16 Q In what way had you followed it?

17 A The news, just listening to the radio shows  
 18 in the morning, trying to run a business. But then  
 19 things became a little bit more than you could just  
 20 follow loosely.

21 Q So when did you kind of buckle down and start  
 22 watching it closely?

23 A When they lifted the camping ban in July  
 24 of --

25 Q When they --

Page 22

1 A -- in July of 2019.

2 Q When city council did?

3 A Mm-hm.

4 Q Try to answer yes or no, because it's hard  
 5 for --

6 A Oh, yes. Sorry about that.

7 Q Just out of the curiosity, have you ever  
 8 heard of the Zimmerman versus City of Austin lawsuit?

9 A Yes.

10 Q And did you follow that lawsuit at all when  
 11 it was going on?

12 A No.

13 Q When did you first learn about that lawsuit?

14 A During my campaign.

15 Q The District --

16 A I just started hearing about it.

17 Q For District 10?

18 A Yeah. Yes.

19 Q Did you consider yourself to be a successful  
 20 fundraiser in terms of campaign contribu- raising  
 21 campaign --

22 A Yes.

23 Q Let me finish.

24 A Okay.

25 Q Raising campaign funds during the race for

Page 23

1 District 10?

2 A Yes.

3 Q Really good fundraiser? Pretty good? Mid-  
 4 fair to middling? Do you have kind of a view of that?

5 A I felt like we were very successful.

6 Q And you mean you had a successful fundraising  
 7 operation in place and you successfully raised funds to  
 8 run your race, right?

9 A Yes.

10 Q I want to focus a bit now on the allegations  
 11 of harm you have made with respect to being restricted  
 12 under the city ordinance you're challenging from  
 13 raising funds outside the fundraising window.

14 A Mm-hm.

15 Q Okay? That's where I want to focus. I guess  
 16 I'll start first by asking you, is there anything in  
 17 the four declarations you filed in this case that you  
 18 want to change at this point.

19 A Not that I know of.

20 Q So can you tell me the best version you can  
 21 of the harm you're suffering right now from not being  
 22 able to raise funds outside the fundraising window in  
 23 your race for whatever it is you're going to run for?

24 A Yes, I can. We had tremendous, tremendous  
 25 momentum coming off of that runoff where we nearly

Page 24

6 (Pages 21 to 24)

1 caused an upset and unseated an incumbent 49 to 51  
 2 percent, and we have -- we knew right away that we were  
 3 going to be running in 2022. We, we knew that we  
 4 wanted to continue with that momentum and represent the  
 5 people of Austin who are currently very unrepresented  
 6 on the city council.

7 Q I'm going to ask you to focus on the  
 8 question.

9 A I am. I am. So how I'm being harmed and how  
 10 the people -- the City of Austin --

11 Q I want to know how you're being harmed.

12 A I'm being harmed because I cannot raise money  
 13 to continue to disseminate my message and provide a  
 14 diversity of thought for the City of Austin where right  
 15 now there's a vacuum of 11 people on the council with  
 16 apparently everything they seem to vote on is nearly in  
 17 unison, which that cannot possibly be representative of  
 18 the City of Austin. And I need money to disseminate my  
 19 message on radio ads, mailers. I need to hire a  
 20 political strategist, I need to hire a campaign  
 21 consultant, I need to hire a social media consultant,  
 22 which I have all teed up and ready to go, but I don't  
 23 have any campaign funds left to hire them.

24 Q So in hiring let's say a campaign consultant.  
 25 Okay? Just to focus on one of the things you said you

Page 25

1 can't do --

2 A Mm-hm.

3 Q -- unless you can raise the money. How do  
 4 you choose a campaign consultant?

5 A You hopefully --

6 Q How do you choose?

7 A How do I choose?

8 Q Yeah.

9 A Somebody that I can work well with who has  
 10 a -- is a like-minded person who wants to -- who's  
 11 behind the things that we stand for in our campaign,  
 12 somebody who can get the job done, who's had  
 13 experience, that kind of thing.

14 Q And would the kind of campaign consultant you  
 15 would choose to hire differ depending on whether you're  
 16 running for mayor or for city council, a city council  
 17 district?

18 A Possibly.

19 Q In what way?

20 A I'm not really that sure, because I'm not  
 21 that experienced of a candidate, but I have a couple  
 22 people in mind, and I, and I actually think that they  
 23 would be great either way.

24 Q Well, I thought you said --

25 A I think, I think it's most important that the

Page 26

1 person understand how politics work in Austin, so I'm  
 2 going to say yes, that one person would work for either  
 3 race.

4 Q But before that you said it possibly could  
 5 make a difference, and that's what I was asking about,  
 6 what -- how would it make a difference.

7 A Well, I'd like to retract that, then, because  
 8 I -- now that I'm being asked the question and having  
 9 thought about it, that the person that I would choose  
 10 would be good in either race.

11 Q Okay. And is it fair to say that harm that  
 12 you're describing, again, it's kind of, you know,  
 13 several things in the answer, but basically it boils  
 14 down to not being able to gather the funds so that you  
 15 can spend them to put together a campaign that gets  
 16 people hired and gets the message out?

17 A Gets hired, gets the message out, and, and so  
 18 that I'm able to run as a candidate. I'm not -- I  
 19 don't want to just share my message with the neighbors.  
 20 I need to raise money to run a campaign to win the  
 21 mayor's office, and that's going to take, I've heard,  
 22 over a million dollars to do, and it takes time to  
 23 raise a million dollars.

24 Q Right. And it takes time for anyone running  
 25 for that office to raise a million, correct?

Page 27

1 A Mm-hm. Yes.

2 Q Do you have an understanding about whether  
 3 political action committees -- under the city ordinance  
 4 and city charter whether political action committees  
 5 that are going to end up supporting your candidacy or  
 6 opposing your opponents can raise funds outside the  
 7 fundraising window?

8 A I, I believe they can.

9 Q And have -- are you aware of any PACs at this  
 10 point that you expect to support your candidacy or  
 11 oppose the candidacy of any of your opponents?

12 A I'm not aware.

13 Q Can you think of -- you described in  
 14 answering my question the harm that you see from the  
 15 temporal restriction of you right now. Let me just  
 16 give you a chance to say: Can you think of any other  
 17 harm to you from that?

18 A Harm to me?

19 Q From the ones you've already testified to  
 20 just a few minutes ago.

21 A I think that it's a harm to me as it would be  
 22 to any candidate who's running against an incumbent,  
 23 especially in the city of Austin, to be arbitrarily  
 24 restricted to fundraise one year out from an election  
 25 versus all four years that the incumbents get to do

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1 with a fully paid staff, unearned media, their mailing  
2 lists of 250,000 people. Yeah. I'm being harmed.  
3 It's not, it's not a fair fight. I mean, it's very  
4 disadvantageous to challengers in the city of Austin  
5 against incumbents.

6 Q But you don't know if you're going to run for  
7 city council.

8 A That's true.

9 Q So let's assume you don't.

10 A Mm-hm.

11 Q How are you harmed in that regard?

12 A We don't -- how do I think that -- hm. I, I  
13 think that everyone's harmed. I think the City --

14 Q I'm asking how you're harmed. I'm not --

15 A Okay. I'm --

16 Q I don't care about how everyone else --

17 A Okay.

18 Q -- is harmed.

19 A I'll tell you. I am a voter in the city of  
20 Austin, and I'm being harmed when there are challengers  
21 out there, potential candidates who might represent my  
22 voice, I'm being harmed because they can't raise money  
23 to run as a candidate. They might be somebody I want  
24 to vote for, and I don't even know they exist because  
25 they don't even have money to get their message out.

Page 29

1 Q Okay. Let's talk about you as a candidate.

2 A Mm-hm.

3 Q How are you harmed?

4 A I'm --

5 Q Assuming you aren't running --

6 A I'm, I'm --

7 Q -- in this --

8 A -- harmed --

9 Q Wait. Let me finish the question. Assuming  
10 you aren't running against an incumbent for whatever  
11 office you run in, how are you as a candidate harmed by  
12 that fundraising limit beyond what you've already said?

13 A I don't know if I need to reiterate the part  
14 about where I have -- the momentum I had coming out of  
15 that runoff, I am completely handcuffed and, and  
16 completely silenced by the fact that I have to spend  
17 one year from that runoff on December 15th to start  
18 raising money again and continue my campaign.

19 Q Okay.

20 A I'm severely harmed by that. I'm going to  
21 have to start all over again on November 8th.

22 Q And how will you know how big the harm is if  
23 you don't get the restriction lifted?

24 A How would anybody know that?

25 Q Well, do you have any conception of how?

Page 30

1 A I could, I guess I could go back and look at  
2 my radio ads and see how much money I generated every  
3 time I ran a radio ad, because when I ran a radio ad  
4 they would pay for themselves probably three or four  
5 times over. So I mean, there's a way, probably, to  
6 quantify how I'm being harmed. I don't have those  
7 numbers in front of me, but I think they're  
8 significant. Thousands and thousands of dollars.

9 Q Okay. So the quantification is in terms of  
10 how much money you raised, correct?

11 A Yes.

12 Q Okay.

13 A I mean, that would be the only thing I would  
14 have to base it on.

15 Q And do you think the prime factor in your  
16 being able to run a credible campaign is the ability to  
17 raise money now instead of starting -- waiting until  
18 November 8th of 2021?

19 A I sure do. I think that right now what -- to  
20 prove my viability as a mayoral candidate, the faster  
21 and more money I can raise the sooner, just causes  
22 normal people to develop enthusiasm, jump onboard, and  
23 believe that we can take it all the way to the finish  
24 line. I think, yeah, the momentum I had could have  
25 been parlayed right into an amazing campaign where it

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1 might have even benefited the City of Austin where more  
2 people might actually show up and vote.

3 Q So why are you bothering to run since you  
4 lost that momentum?

5 A Because I care about the City of Austin.

6 Q But you obviously think that losing that  
7 momentum did not ruin your candidacy, correct?

8 A I don't think it helped my candidacy.

9 Q Did it ruin it?

10 A Well, "ruin" is a pretty strong word. It --

11 Q Did it harm it?

12 A -- hindered it.

13 Q Did it harm it?

14 A It -- yeah. I believe it harmed it. I  
15 believe that I have been harmed as a candidate by this  
16 fundraising window.

17 Q But not sufficiently to keep you from being a  
18 viable candidate, correct?

19 MR. NAJVAR: I'm going to, I'm  
20 going to object to the extent it calls for a legal  
21 conclusion.

22 MR. HICKS: Okay.

23 MR. NAJVAR: And you can, you can  
24 answer.

25 A I'm sorry. Repeat that?

Page 32

8 (Pages 29 to 32)

1 MR. HICKS: Do you mind reading  
2 that one back?  
3 (The referenced question was read  
4 back by the court reporter.)  
5 A No. Not sufficiently to keep me from being a  
6 viable candidate.  
7 Q And how do you test, just sitting here right  
8 knew, whether you're a viable candidate for mayor?  
9 A How do I test it?  
10 Q For yourself.  
11 A I feel like, just based on contacts I get  
12 from supporters of the previous campaign, that the  
13 platform we had then that was so successful those  
14 issues are still on the table, still on the forefront,  
15 still as important to everyone as they were before.  
16 Because as you can see out front here, nothing's been  
17 solved yet in that regard, regarding the homeless  
18 crisis. The police are still terribly underfunded and  
19 struggling for support from the city council here in  
20 Austin.  
21 Those are two things that are -- have  
22 amazing bipartisan support in this town, and I just  
23 feel like the platform we have still speaks to  
24 everyone. And I'm still getting calls and emails, and  
25 people are excited about having a voice like mine on

Page 33

1 the dais.  
2 Q So you aren't completely silenced in your  
3 campaign, correct?  
4 A I am not nearly as widely heard --  
5 Q My --  
6 A -- as I am.  
7 Q That's not my question.  
8 A Completely to zero? No.  
9 Q Earlier you had said you were completely  
10 silenced, and I'm just asking you, you aren't  
11 completely silenced, are you?  
12 A In a meaningful way I am. I don't have a  
13 broad reach with my social media the way that currently  
14 everyone sitting on the city council and the mayor's  
15 office do.  
16 Q Yeah. But you aren't completely silenced.  
17 A I am not completely down to zero silenced.  
18 MR. HICKS: Let's -- can we take  
19 a short -- we don't have to take a break, like go  
20 have -- can we go off the record briefly? I want to  
21 check how much time I've used of the hour and then  
22 think about what else I'm going to ask. Is that okay  
23 with everybody?  
24 MR. NAJVAR: That's fine.  
25 (At 1:43 p.m. the proceedings went

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1 momentarily off the record, continuing at 1:44 p.m.)  
2 Q (By Mr. Hicks) Actually, one thing I  
3 just -- it's a minor clarification I'm trying to get.  
4 So in one of your -- one of the filings in the case,  
5 it's Document 17, I can't remember what it is. You  
6 have an attachment to your email of, Ms. Virden, to the  
7 city clerk saying, "Here's my amended form."  
8 A Mm-hm.  
9 Q Do you recall that?  
10 A Yes.  
11 Q And you sent the email, and I'm just -- you  
12 sent it on May 6th --  
13 A Mm-hm.  
14 Q -- 6 o'clock p.m., is what your email  
15 attachment shows.  
16 A Yes.  
17 Q And I can show this to you. I don't mind  
18 showing it to you. And you said --  
19 A I've got it. I've got --  
20 Q You say to the city clerk, "Please confirm  
21 your receipt. Let me know if this is all you need, and  
22 let me know if it needs to be efiled."  
23 A Yes.  
24 Q You can see that. So I noticed in one of  
25 those exhibits in front of you --

Page 35

1 A Yes.  
2 Q -- I can't remember which one --  
3 A Uh-huh.  
4 Q -- it --  
5 A This one maybe?  
6 Q Let me just make sure so we're clear.  
7 A Oh, this one maybe. I think that one  
8 probably.  
9 Q Let's see. This is the -- yeah. This one,  
10 yeah, Deposition Exhibit 2. Do you see the file-stamp  
11 up there in the right-hand corner?  
12 A Yes, I do.  
13 Q That says "Received"?  
14 A Yes.  
15 Q It looks like the city clerk received it on  
16 the 10th of May?  
17 A Uh-huh. Yes.  
18 Q Do you know what happened between May 6th and  
19 May 10th?  
20 A No. I do not, and I was really con- we were  
21 watching that, and I don't know what took the city  
22 clerk's office four days to post this.  
23 Q So you had asked, Hey, let me know if I need  
24 to do anything else --  
25 A Mm-hm.

Page 36

1 Q -- in essence, right?

2 A Mm-hm.

3 Q The thing you just went over.

4 A Yes.

5 Q And you never heard anything back, right?

6 A No. I, I don't -- yeah. I did, actually. I

7 think I got an email back saying, We received it, I

8 think.

9 Q But you never heard somebody say, Well, you

10 need to do this, this, and this differently or

11 anything?

12 A No. She said, You don't need to -- I can't

13 remember for sure, but I believe the email reply said

14 that I don't need to do anything differently, that

15 they'd received this.

16 Q Okay. I was just curious. Okay. So do you

17 understand what a bundler is?

18 A Yes.

19 Q What is a bundler?

20 A A bundler is a --

21 Q In your understanding.

22 A My understanding, which again, I am a

23 relatively new candidate, but I had one bundler during

24 my campaign, and it's a person who --

25 Q During the District 10 campaign, right?

Page 37

1 A In my District 10 campaign. It's a person

2 who receives campaign contributions on my half, I guess

3 like separate checks, and then they submit them all to

4 the -- to me in one envelope or whatever.

5 Q Right. They bundle them. It's --

6 A Yeah. They bundle them.

7 Q -- kind of, yeah, it's kind of obvious when

8 you talk through it.

9 And you said you had one bundler in your

10 campaign finance report. That's what I'm looking at

11 here.

12 A Mm-hm. Yes.

13 Q Winston Smith.

14 A Yes.

15 Q Do you -- who is Winston Smith?

16 A He's a gentleman that contacted me --

17 Q Did you know him beforehand?

18 A I did not know him before.

19 Q And he contacted you, you said? I'm sorry to

20 interrupt.

21 A He called me and he said he supported my

22 campaign and wanted to meet me, and --

23 Q And at some point --

24 A -- so I did.

25 Q Sorry.

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1 A So I did. So I met him.

2 Q And so at some point he gathered together

3 checks from some people I suppose that he knew or had

4 contact with, put them together, and gave them to

5 you --

6 A Yes.

7 Q -- as the bundled contribution, correct?

8 A That's my understanding of what happened.

9 Yes.

10 Q Okay. Do you recall when that bundled set of

11 checks was delivered?

12 A I do not.

13 Q I don't know if it's a problem with forms or

14 what. I couldn't find a date on it for me to

15 (inaudible) --

16 A Do you want to -- I, I might be able to see

17 it.

18 Q Oh, sure. Let me just for the record

19 represent this is from Attachment C to the city clerk's

20 declaration that she submitted yesterday as part of the

21 corrected 12/8/20 report.

22 A So you just want to know what day that the

23 bundling --

24 Q I just was curious --

25 A -- the bundled check was received?

Page 39

1 Q -- because there's no date on that that I can

2 see. It may --

3 A So they -- so in the report, the filing, you

4 do this, but then it's also reflected elsewhere in the

5 report. So it may be that the date information is in

6 the other place in the report. That's my recollection.

7 I don't see the dates either, just like you don't.

8 Q Okay. That's all I have on that. I'm close

9 to finishing. In fact, I may be finished. Just a

10 second.

11 Your current view, as you said toward

12 the beginning of the deposition, is that you're running

13 for mayor but you haven't foreclosed that you may

14 change your mind and run for one of the city council

15 seats that you end up in on the redistricting. Is that

16 a fair shorthand version of what you said?

17 A With one addition. I do not intend to change

18 it to a council seat even if it becomes available.

19 It's an option, but I am -- just, just because a

20 district seat might become available does not mean I'm

21 going to change it to run for the district -- or the

22 council seat. I right now am 100 percent committed to

23 running for the mayor's seat.

24 Q Okay. And how will it be made known by you

25 when and if you decided to instead run for a council

Page 40

1 seat?

2 A I will announce it if I made that decision.

3 Q And how will you announce it?

4 A Well, I would -- depending on if I have money

5 or not, if I'm able to raise campaign funds. If I'm

6 able to raise campaign funds, I might announce it on

7 the radio. If I can't announce it on the radio because

8 I don't have any money, then I'll announce it on my

9 Facebook page, my campaign Facebook page, my personal

10 Facebook page, my Twitter account, maybe in a Constant

11 Contact email blast. That's how I keep my supporters

12 informed.

13 Q How many people are on the blast, the

14 Constant Contact blast?

15 A I do not know exactly. I think around 2,500.

16 Q And you're able to maintain that going right

17 now, right?

18 A It's, like, \$79 a month, and I have a few

19 hundred dollars left, that and my post office box.

20 Q By 79 -- you said how much money?

21 A It's about \$79 a month --

22 Q You said something about --

23 A -- for Constant Contact.

24 Q Sorry. You said how much money you had left,

25 I didn't catch that.

Page 41

1 A I could look.

2 Q I don't need an exact amount. I'm just

3 trying to --

4 A It's a few hundred dollars.

5 Q And you meant by "left" you mean from the,

6 from the former campaign?

7 A Correct.

8 Q From the contributions --

9 A Correct.

10 Q -- that you've got left over from the former

11 campaign.

12 A Correct.

13 Q And let's say those run out. You, you still

14 could fund the Constant Contact, it would just be out

15 of your own funds, correct?

16 A I would probably be willing to do that. Yes.

17 Q I'm not saying whether you would, but you

18 could if you --

19 A Oh, I could. Yeah.

20 Q Assuming you have the money.

21 A I could.

22 Q Yes. What, what is sent out through this?

23 A I'm sorry?

24 Q What is sent out through the Constant Contact

25 blast?

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1 A Well, for example, when we had the May 1st

2 ballot initiatives, the propositions, I sent out my

3 recommendations on how I would vote for each one of the

4 propositions. That kind of thing. Or if there's

5 another like-minded candidate out there running, we

6 might support that like-minded candidate. Like, Jen

7 Stevens, she was running for Eanes ISD, so we sent out

8 an email support for her. It's just whatever we feel

9 like the supporters might want to hear from me about.

10 Q And you said about 2,500 people?

11 A Mm-hm. Yes.

12 Q And have you sent out a blast saying you're

13 running for mayor?

14 A Yes. I believe so. Maybe not on Constant

15 Contact. I could -- honestly, I believe we have. Yes.

16 Q When did you send that out?

17 A I can't recall exactly when that was.

18 Q Do you recall roughly?

19 A Oh, five or six weeks ago.

20 Q And how do people get to be on the list to

21 receive this blast?

22 A During the campaign for District 10 it was a

23 lot easier to get people to -- they were going to the

24 website on their own. So I have a website where they

25 can subscribe to the email list.

Page 43

1 Q A campaign website.

2 A Yes.

3 Q Okay. Go ahead. Sorry.

4 A Now it's a little bit trickier to get

5 people directed to the website, because I used to do

6 it via radio ads. We would finish our radio ads

7 during the campaign with, you know, Please go to

8 JenniferforAustin.com to subscribe to the email list,

9 but more importantly, to donate.

10 So I can't do that anymore, so -- we

11 would direct people to the website from the radio ads.

12 Right now I do it just with miscellaneous posts and

13 tweets whenever I feel it makes sense.

14 Q And do people have to affirmatively say, I

15 want to be on the blast list for Constant Contact, or

16 how do they end up on the list?

17 A Well, I believe that the website just asks

18 them if they want to subscribe to the, to the

19 newsletters. I don't understand the question so much.

20 I, I think --

21 Q How does someone --

22 A -- I think they, they voluntarily subscribe.

23 They fill in their information, their name, address,

24 and check "Subscribe."

25 Q Okay. That's to the newsletter, right? I'm,

Page 44

1 I'm a little confused about --  
 2 A Or maybe it's just our email list. I, I  
 3 don't know if it's only for the newsletter, but it's  
 4 probably our email list, and then we use our email list  
 5 for the newsletters.  
 6 Q Okay. But do you have an understanding about  
 7 whether people that visit your website are  
 8 automatically added to the email list or not? Do you?  
 9 A I don't believe they're automatically added.  
 10 I think they have to input their information.  
 11 Q And you mentioned Twitter as a way to get  
 12 your, your message out some, right? How, how, how do  
 13 you -- how does that work, and can you tell how  
 14 many -- terrible set of questions.  
 15 Can you tell how many people view your  
 16 tweets with respect to campaign matters?  
 17 A With respect to?  
 18 Q Campaign matters, your candidacy.  
 19 A There is a, a, an icon you can click onto to  
 20 see the tweet activity, you know, how many impressions  
 21 you make or how many profile clicks or how many times  
 22 somebody has clicked on a hashtag. I mean, they, they  
 23 do give you some statistics.  
 24 Q And have you done that?  
 25 A Yeah.

Page 45

1 Q And, and so --  
 2 A Yes.  
 3 Q -- how many, how many people?  
 4 A It varies. It can go from 3,500 to 1,500.  
 5 It's all over the place, depending on the interest  
 6 level of the tweet and the time of day. I mean, some  
 7 things are more interesting to people than others, and  
 8 that's how you learn it. Sometimes it's only 22. It  
 9 really varies amazingly.  
 10 MR. HICKS: I pass the witness.  
 11 Thank you.  
 12 EXAMINATION  
 13 BY MR. NAJVAR:  
 14 Q Ms. Virden, I just have a couple of questions  
 15 to follow up. Mr. Hicks was asking you about the  
 16 burden that you, that you, you know, perceive or  
 17 experience from this inability to raise money  
 18 immediately, and you had described a couple things.  
 19 You described a lack of momentum or that you felt like  
 20 you had a momentum coming out of the last campaign for  
 21 District 10, and you wanted, I think you said you  
 22 wanted to keep that up. And you also said you wanted  
 23 to, you know, speak about issues and build your  
 24 campaign account for mayor.  
 25 Is all of that -- does any of that

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1 change if you're running, if you end up running against  
 2 an incumbent or a nonincumbent?  
 3 A The, the necessity to build the campaign  
 4 account and -- it matters no matter which office you're  
 5 running for. It's important to, in my opinion, to  
 6 build the campaign account for use now and for when  
 7 it's closer to election day when it, when it really  
 8 gets down to the nitty-gritty.  
 9 Q Okay. And you, and you described a few  
 10 things that Mr. Hicks asked you what you used your  
 11 Constant Contact account for, and you described a few  
 12 things.  
 13 Let's say we were able to get an  
 14 injunction in this case and you were able to fundraise  
 15 after that. Would, would fundraising for your campaign  
 16 presently be one of the things that you want to use the  
 17 Constant Contact list for?  
 18 A Yes. I would immediately send out a Constant  
 19 Contact and announce to God and everybody that we are  
 20 now able to receive campaign contributions and get  
 21 serious.  
 22 MR. NAJVAR: Pass the witness.  
 23 FURTHER EXAMINATION  
 24 BY MR. HICKS:  
 25 Q On that latter question, so let's assume the

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1 current ban is lifted, just to make up a time, July  
 2 1st. The judge in the case says, I'm going to grant a  
 3 preliminary injunction, that the stay, that we don't  
 4 see the stay for (inaudible) entertain one. Just kind  
 5 of assume it's lifted judicially. What will you do?  
 6 A What will I do? With the money?  
 7 Q No. What will you do to get the money?  
 8 A Oh. I'll immediately start asking all of my  
 9 supporters to start hosting fundraising events, I'll  
 10 get started on Constant Contact, Twitter, my campaign  
 11 Facebook, my personal Facebook, and just say, you know,  
 12 We are up and running, let's -- the sooner we can start  
 13 generating enough money, then we'll start doing the  
 14 radio ads and we'll start putting our voice out there  
 15 for every single issue that comes across the dais and  
 16 try to slow this runaway train that we call our Austin  
 17 City Council.  
 18 Q So isn't it too late to do that?  
 19 A Too late to do what?  
 20 Q To get that kind of campaign moving and  
 21 fundraising activity to do it.  
 22 A It's got to start somewhere. I assume you're  
 23 talking about the fact that I've claimed that we've  
 24 been completely halted, the momentum?  
 25 Q No. I just mean come July 1st you haven't

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12 (Pages 45 to 48)

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been able -- you're arguing that it's not fair -- this is not a fair characterization, I think.

You've been arguing that you're harmed by the code's provision about not being able to fundraise, and I'm just asking come July 1st if you could start it up, why aren't you harmed so badly it's too late?

A Because I could have done so much more if I'd been able to start fundraising right out December 15th. That means I've gone from December to July without being able to fundraise.

Q Right, but --

A And spend money and influence everything that's coming across the dais.

Q But you still think that July, come July 1st if you could start up -- and we're just making that date up for purposes of the discussion. You still think that by July 1st you can get things moving and get the job done in your candidacy the way you want to get it done, right?

A I have been harmed because I haven't --

Q I'm not asking that question. I'm asking about July 1st. You think you can get moving at that point, correct, in a way that keeps your candidacy moving forward? Answer that question first. You

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restriction is lifted? Do you think that or not?

A I believe so. Yes.

Q Okay.

MR. HICKS: I have no further questions.

MR. NAJVAR: That's it.

(At 2:01 p.m. the proceedings adjourned.)

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can talk --

A But not as I well as I could have if I'd been able to start --

Q So the answer --

A -- on December 16th.

Q -- is yes, correct? You said --

A I -- not as well -- my answer is, not as well as I could have if I'd been able to maintain that -- take that momentum from December 15th and go on. Now I've --

Q That's not my question.

A -- I've not been able to raise money --

Q Yeah. That's --

A -- since December 15th to your hypothetical July whatever date.

Q 1st.

MR. HICKS: But objection, nonresponsive.

Q My question was, come July 1st -- I want you to answer the question I asked. You can, you can pontificate about other stuff, but I want you to answer the question I asked.

Come July 1st do you think it would be sufficient for you to get your campaign going in order to run a viable campaign for mayor if, if the

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CHANGES AND SIGNATURE


JENNIFER VIRDEN

June 16, 2021

PAGE	LINE	CHANGE	REASON

13 (Pages 49 to 52)



<p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2</p> <p>3 I, JENNIFER VIRDEN, do hereby certify that I have</p> <p>4 read the foregoing pages and that the same is a correct</p> <p>5 transcription of the answers given by me to the</p> <p>6 questions therein propounded, except for the</p> <p>7 corrections or changes in form or substance, if any,</p> <p>8 noted in the attached Changes and Signature Page</p> <p>9 (Errata).</p> <p>10</p> <p>11</p> <p>12</p> <p>13 JENNIFER VIRDEN</p> <p>14</p> <p>15 DATE</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 53</p>	<p>1 requested by the deponent, and that the signature is to</p> <p>2 be returned within 3 days from the date of receipt of</p> <p>3 the transcript. If returned, the attached Changes and</p> <p>4 Signature Page contains any changes and the reasons</p> <p>5 therefor:</p> <p>6 That \$510.80 is the deposition officer's charges</p> <p>7 to the City of Austin for preparing the original</p> <p>8 deposition transcript, expedite fees, and any copies of</p> <p>9 exhibits;</p> <p>10 That the amount of time used by each party at the</p> <p>11 deposition is as follows:</p> <p>12 Renea Hicks - 50 minutes</p> <p>13 Jerad Najvar - 2 minutes</p> <p>14</p> <p>15 That pursuant to information given to the</p> <p>16 deposition officer at the time said testimony was</p> <p>17 taken, the following includes counsel for all parties</p> <p>18 of record:</p> <p>19 Renea Hicks - Attorney for Defendant</p> <p>20 Jerad Najvar - Attorney for Plaintiff</p> <p>21</p> <p>22 I further certify that I am neither counsel for,</p> <p>23 related to, nor employed by any of the parties or</p> <p>24 attorneys in the action in which this proceeding was</p> <p>25 taken, and further, that I am not financially or</p> <p>otherwise interested in the outcome of the action.</p> <p style="text-align: right;">Page 55</p>
<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE WESTERN DISTRICT OF TEXAS</p> <p>3 AUSTIN DIVISION</p> <p>4 JENNIFER VIRDEN, §</p> <p>5 Plaintiff, §</p> <p>6 v. § CIVIL ACTION NO.</p> <p>7 THE CITY OF AUSTIN, § 1:21-CV-271-RP</p> <p>8 Defendant. §</p> <p>9 REPORTER'S CERTIFICATION OF THE</p> <p>10 ORAL DEPOSITION OF JENNIFER VIRDEN</p> <p>11 June 16, 2021</p> <p>12 I, Sandra S. Givens, Certified Shorthand Reporter</p> <p>13 in and for the State of Texas, hereby certify to the</p> <p>14 following:</p> <p>15 That the witness, JENNIFER VIRDEN, was duly sworn</p> <p>16 by the officer and that the transcript of the oral</p> <p>17 deposition is a true record of the testimony given by</p> <p>18 the witness;</p> <p>19 That the original deposition transcript was</p> <p>20 submitted to: JENNIFER VIRDEN;</p> <p>21 That a copy of this certificate was served on all</p> <p>22 parties and/or the witness shown herein on June 7,</p> <p>23 2021.</p> <p>24 I further certify that pursuant to FRCP Rule</p> <p>25 30(f)(1) that the signature of the deponent was</p> <p style="text-align: right;">Page 54</p>	<p>1 Certified to by me this 18th day of June 2021.</p> <p>2</p> <p>3 GIVENS COURT REPORTING</p> <p>4 6549 Fair Valley Trail</p> <p>5 Austin, Texas 78749</p> <p>6 (512) 301-7088</p> <p>7  SANDRA S. GIVENS, CSR</p> <p>8 # sg-1876 Certification No. 5000</p> <p>9 Certificate Expires 1/1/22</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 56</p>

14 (Pages 53 to 56)

<b>A</b>	35:7	27:8 36:23	<b>badly</b> 49:6	<b>C</b> 2:1 39:19
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